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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. –, Original

STATE OF ARKANSAS,

Complainant,

vs.

STATE OF TEXAS, ET AL.,

Defendants

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

TOM GENTRY,
Attorney General,
State of Arkansas.

Of Counsel:

H. S. YOCUM,
El Dorado, Arkansas;
W. W. SHARP,
Brinkley, Arkansas;
KAY MATTHEWS,
Little Rock, Arkansas;
E. J. BALL,
Fayetteville, Arkansas.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. —, Original

STATE OF ARKANSAS,

Complainant,

vs.

STATE OF TEXAS, AND JOHN BEN SHEPPERD,
ATTORNEY GENERAL OF TEXAS,

Defendants

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

The State of Arkansas, appearing by its duly authorized Attorney General, Tom Gentry, respectfully moves and prays the Court for leave to file the Bill of Complaint submitted herewith.

The State of Arkansas seeks to bring this suit under the authority of Article III, Section 2, Clause 2, of the Constitution of the United States, and 28 U. S. C. A., Section 1251.

TOM GENTRY,
Attorney General,
State of Arkansas.

Of Counsel:

H. S. YOCUM,
El Dorado, Arkansas;
W. W. SHARP,
Brinkley, Arkansas;
KAY MATTHEWS,
Little Rock, Arkansas;
E. J. BALL,
Fayetteville, Arkansas.

Statement in Support of Motion

A controversy exists between the complainant, the State of Arkansas, and the defendants, the State of Texas and John Ben Shepperd, the duly elected, qualified and acting Attorney General for the State of Texas. This controversy grows out of a contract entered into between the State of Arkansas through her official agent and instrumentality, the University of Arkansas, and the William Buchanan Foundation, a private corporation existing under and by virtue of the laws of the State of Texas.

The William Buchanan Foundation administers a charity created by William Buchanan by a declaration of trust executed in Bowie County, Texas in 1923.

Pursuant to the provisions of the 1923 declaration of trust, the Foundation entered into a contract with the University of Arkansas, the complainant's official agent and instrumentality, under the terms of which the Foundation promised to pay the sum of five hundred thousand dollars ($500,000.00) to the University in exchange for its promise to construct and maintain for a period of twenty (20) years a pediatric ward which is to be the sixth floor of the new charitable hospital of the medical center of the University of Arkansas School of Medicine.

Complainant, by her authorized agent, has fully performed her part of the said contract to date, and the five hundred thousand dollars ($500,000.00) is now due and payable by the Foundation. The Foundation is ready, willing, and able to pay over to complainant the five hundred thousand dollars ($500,000.00), but is prevented from so doing by a pending action for an injunction in the 102nd District Court of Bowie County, Texas. That action was filed by the State of Texas against the Foundation and its

Board of Directors, and the University of Arkansas in November of 1952, and seeks to enjoin the performance of the contract hereinabove set out on the ground that the entire funds of the Foundation are to be expended for the residents and citizens of Bowie County, Texas, and for the benefit of such residents and citizens only, by reason of the following provisions of the 1923 declaration of trust:

> **The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said County, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.**
>
> Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust fund for the purposes mentioned in this paragraph.

The Foundation believes and the complainant contends that the above provisions of the 1923 declaration of trust authorize expenditures of the fund in any geographical area whatever, and the benefits of the Foundation may be world wide.

Accordingly, it is believed that the rights of the State of Arkansas and her citizens can be protected only by a decree from this Court granting relief prayed for in the complaint.

It is respectfully submitted that the motion for leave to file the complaint should be granted.

TOM GENTRY,
Attorney General,
State of Arkansas.

Of Counsel:

H. S. YOCUM,
El Dorado, Arkansas;
W. S. SHARP,
Brinkley, Arkansas;
E. J. BALL,
Fayetteville, Arkansas.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. —, Original

STATE OF ARKANSAS,

Complainant,

vs.

STATE OF TEXAS, AND JOHN BEN SHEPPERD, ATTORNEY GENERAL OF TEXAS,

Defendants

BILL OF COMPLAINT

The State of Arkansas, by Tom Gentry, its Attorney General, by leave of the Court, files its Bill of Complaint, and respectfully says:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States, and 28 U. S. C. A., Section 1251.

II

In this behalf, the complainant acts by and through the University of Arkansas, an official state instrumentality charged by statute and by law with the duty and responsibility of maintaining a public educational institution of higher learning, and a general charitable hospital for the

alleviation of pain and suffering of the needy citizens of the State of Arkansas, and for teaching purposes in connection with the University of Arkansas School of Medicine.

III

The defendant John Ben Shepperd is the duly authorized, qualified, and acting Attorney General for the State of Texas.

IV

On the 9th day of October, 1923, William Buchanan executed a trust instrument in Bowie County, Texas, a certified copy of said instrument, as filed with the Secretary of State of the State of Texas, is attached hereto, and made a part hereof as "Exhibit A", as completely and as fully as if copied verbatim herein.

V

Under the provisions of the said trust instrument, William Buchanan granted, conveyed, assigned, and set over to certain named trustees and their successors in trust, to have and to hold forever, some one million dollars ($1,000,000.00) in cash and United States Government bonds, and complainant avers on information and belief that the corpus of said trust fund is now in excess of two and one-half million dollars ($2,500,000.00).

VI

Among other provisions, the trust instrument contains the following:

> "The purpose of this conveyance and delivery of the Trust Fund is to create and endow a charitable enterprise, to be known as 'The William Buchanan Foundation' in the city of Texarkana, Texas, under which name

and title its activities shall be carried on in the manner and for the uses and purposes following, to-wit:

"1. The Trust Fund and the income therefrom shall be held, used and expended by said Trustees and their successors in this Trust for charitable purposes and for the alleviation of suffering and distress, and to that end the Trust Fund may be used for the establishment and maintenance of charitable and benevolent activities, agencies, and institutions and for the aid of such activities, agencies, and institutions already established, or expended through such other means or agencies which, from time to time, shall seem expedient to the Trustees and their successors in this Trust. **The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said County, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.**

"2. Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust fund for the purposes mentioned in this paragraph.

". . .

"5. The Trustees and their successors shall have power and authority to organize a corporation if in their judgment it becomes advisable to do so to carry out the purposes of this Trust, or such of said purposes as may be lawfully carried out by a corporation, and to

convey the Trust Fund to such corporation, when organized, to be used by such corporation so created as herein provided. If a corporation is formed for administering this Trust, it shall be organized under the name of 'The William Buchanan Foundation' and the persons then acting as Trustees shall constitute the first Board of Directors of such corporation."

VII

Pursuant to the provisions of the trust agreement hereinabove set out in paragraph numbered IV, the William Buchanan Foundation was chartered on February 8, 1930, as a private corporation under and by virtue of the laws of the State of Texas. A copy of the charter of said foundation is attached hereto as "Exhibit B", and made a part hereof as fully as if copied verbatim herein. Subsequently thereto, the trust fund hereinabove set out was transferred unconditionally to the corporation known as the William Buchanan Foundation, and the said corporate entity now holds the trust fund, subject to all the provisions of the original declaration of trust, dated October 9, 1923.

VIII

Paragraph II of the charter of The William Buchanan Foundation reads as follows:

"The purpose for which the corporation is formed is the support of any benevolent, charitable or educational undertaking, and, particularly, for the purpose set forth in the Trust Deed creating The Wm. Buchanan Foundation, dated October 9, 1923, executed by the late William Buchanan of Bowie County, Texas, a certified copy of which is attached hereto and made a part hereof."

IX

Pursuant to the provisions of the charter of the William Buchanan Foundation and the trust instrument executed on

October 9, 1923, by William Buchanan, the William Buchanan Foundation, by its Board of Directors, entered into a contract with the complainant, through its instrumentality, the University of Arkansas, on February 28, 1950. A copy of said contract is attached hereto as "Exhibit C", and made a part hereof as fully as if copied verbatim herein.

X

At a regular meeting duly convened on the 4th day of March, 1950, the Board of Trustees of the University of Arkansas, complainant's authorized instrumentality, unanimously adopted a resolution accepting the contract hereinabove set out, subject to all of the terms and conditions set forth therein, and a certified copy of the resolutions as adopted by the Board of Trustees of the University of Arkansas is attached hereto as "Exhibit D", and made a part hereof as fully as if copied verbatim herein.

XI

On the 30th day of December, 1950, the William Buchanan Foundation amended said contract with the complainant. A copy of said amendment is attached hereto as "Exhibit E", and made a part hereof as fully as if copied verbatim herein. Subsequently, at a regular meeting duly convened on the 8th day of January, 1951, the Board of Trustees of the University of Arkansas, the complainant's authorized instrumentality, unanimously adopted the contract as amended, subject to all the terms and conditions set forth therein. A certified copy of the resolution as adopted by the Board of Trustees of the University of Arkansas is attached hereto as "Exhibit F", and made a part hereof as fully as if copied verbatim herein.

XII

Pursuant to the provisions of the contract hereinbefore set out in paragraphs numbered IX, X, and XI, the William Buchanan Foundation promised to pay the sum of five hundred thousand dollars ($500,000.00) to the University of Arkansas, complainant's authorized instrumentality, in exchange for the promise of the said University of Arkansas to construct and maintain for a period of twenty (20) years an additional one hundred-bed pediatric floor in connection with the new Charity Hospital in the State Medical Center, said floor to be known as the William Buchanan Pavilion for Children. The agreement further provided that the five hundred thousand dollars ($500,000.00) promised by the William Buchanan Foundation must be matched with one million dollars ($1,000,000.00) to be obtained from other sources, thus providing for a total of one million, five hundred thousand dollars ($1,500,000.00) for the specific purpose of adding the extra pediatric floor in the new Charity Hospital in the State Medical Center.

XIII

The University of Arkansas, complainant's authorized instrumentality, has performed fully its part of the agreement to date, and pursuant to the terms of the contract hereinabcve set out between the William Buchanan Foundation and the complainant, payments of the five hundred thousand dollars ($500,000.00) are due and payable in the following manner, as set out in paragraph numbered 3 of the contract:

> "Upon receipt of formal notice from the Board of Trustees of the University of Arkansas that this grant is accepted subject to all of the terms and conditions stated herein, the William Buchanan Foundation will stand ready to make the grant available according to a

mutually agreeable procedure which will enable the fund to be drawn upon by the Treasurer of the University of Arkansas on the following basis: Before construction contracts are executed the extent to which the addition of the sixth or pediatric floor will affect the cost of the other part of the building will be determined by the architects and agreed upon by the University and the Foundation. When construction is actually begun on the sixth or pediatric floor, an amount sufficient to defray this cost may be drawn from the fund. During the actual construction of the sixth floor the remaining amounts may be drawn from the fund except that a balance of $50,000 will be left until construction is completed. All such withdrawals by the Treasurer of the University may be made only after certification by the architects, Edward Stone and Erhart, Eichenbaum and Rauch, that contractor's periodical estimates of completion are approved by them. In the event that construction of the pediatric pavilion and all attendant additional costs in the building proper do not require the expenditure of the full $500,000, and residue will be returned to the William Buchanan Foundation after the construction has been completed."

XIV

In reliance upon the said contract, the University of Arkansas, complainant's authorized instrumentality, proceeded to have plans drawn for the construction of a new Charity Hospital in the Medical Center which would include a sixth floor for one hundred pediatric beds, to be known as the William Buchanan Pavilion for Children, and on September 12, 1951, the University of Arkansas entered into contracts with W. R. Grimshaw Co., Natkin Co., and Fagan Electric Company, for the construction of said hospital, including the extra pediatric floor, at a cost of six million, five hundred and eighty three thousand, four hundred and seventy-six dollars ($6,583.476.00).

XV

At the time of the filing of this action, construction of the Medical Center and/or the new Charity Hospital, as set out in paragraph numbered XIV, has progressed to the sixth floor, and the payments under the contract between the complainant and the William Buchanan Foundation are now due and payable.

XVI

The defendant State of Texas, by its Attorney General, filed an action against the William Buchanan Foundation and its Board of Directors in the 102nd District Court of Bowie County, Texas, on November 14, 1952, whereby it sought to enjoin the performance of the contract between the William Buchanan Foundation and the complainant hereinabove set out. A copy of said complaint is attached hereto as "Exhibit G", and made a part hereof as fully as if copied verbatim herein.

XVII

On the 10th day of March, 1953, the defendant State of Texas, by its Attorney General John Ben Shepperd, filed an amendment to the complaint heretofore filed in the 102nd District Court of Bowie County, Texas, on November 14, 1952, and named the University of Arkansas, complainant's authorized instrumentality, and the Board of Trustees thereof as party defendants in said cause. A copy of said amended complaint is attached hereto as "Exhibit H", and made a part hereof as fully as if copied verbatim herein.

XVIII

The 102nd District Court of Bowie County, Texas, is without jurisdiction in the said cause, in that any judgment or decision rendered by the said Court would be without force

and effect, because the action therein involves a case or controversy between the State of Texas and the State of Arkansas, and the Attorney General for the State of Texas, John Ben Shepperd, is acting without power or authority, and in excess of the authority conferred upon him as Attorney General for the State of Texas, and that his act is illegal and in violation of the rights of complainant.

XIX

The defendants, State of Texas and John Ben Shepperd, Attorney General for the State of Texas, erroneously contend that the provisions of paragraphs numbered 1 and 2 of the declaration of trust, dated the 9th day of October, 1923 ("Exhibit A" herein), authorize the expenditures of the trust fund to be made only in Bowie County, Texas. The said erroneous contentions of the defendants are based upon the following provisions:

> **"1. The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said County, but also for the benefits of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.**
>
> "2. Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness such as the establishment and maintenance of a children's hospital and clinic, or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph, if, in their judgment, it becomes wise or advisable not

to use the Trust Fund for the purposes mentioned in this paragraph."

XX

The William Buchanan Foundation through its Board of Trustees, Mrs. Helen B. Seeger, James G. Boyce, John W. O'Boyle, Mrs. Mary Seeger O'Boyle, Mrs. Hannah Seeger Davis, F. S. Carroll, William G. Fuller, Mrs. Olivia S. Moore, Mrs. Emily Graham Fuller, Stanley J. Seeger, Jr., and James D. Heldt, contends and believes that the said declaration of trust, marked "Exhibit A" herein, authorizes them to expend the trust fund in any geographical area whatever, and that the beneficiaries of said trust may be world-wide. The said William Buchanan Foundation, by its Board of Directors, is ready, willing, and able to perform its contract with the complainant, but it is prevented from so performing by the unlawful and illegal acts of the State of Texas and John Ben Shepperd, the Attorney General for the State of Texas.

XXI

The complainant has proceeded with the construction of the Medical Center and/or Charity Hospital to the sixth floor and is without funds to proceed further and to final completion of said hospital, and unless this Court restrains the unlawful conduct of the State of Texas and John Ben Shepperd, Attorney General for the State of Texas, the State of Arkansas and its instrumentality, the University of Arkansas, will be irreparably damaged in that it will be unable to complete the said hospital according to the original plans, and that the construction of said hospital has proceeded to the point where the plans cannot be changed, thereby reducing the total cost of construction of said hospital.

XXII

A controversy exists between the complainant and the defendants as to the interpretation, construction and application of the trust indenture executed by William Buchanan on the 9th day of October, 1923. Such controversy relates particularly to paragraphs 1, 2, and 5 of said trust indenture, as set out in paragraph VI of this Bill of Complaint.

XXIII

Arkansas has no plain, speedy, or adequate remedy at law, and has no remedy whatsoever in any other court.

WHEREFORE complainant, the State of Arkansas, prays that:

1. A temporary injunction be issued restraining the defendants, State of Texas and the Attorney General of the State of Texas, from proceeding with the action now pending in the 102nd District Court of Bowie County, Texas, and that this Court take jurisdiction of the parties and subject matter.

2. This Court decree that the State of Arkansas, through its instrumentality, the University of Arkansas, is entitled to the five hundred thousand ($500,000.00) under its contract with the William Buchanan Foundation, and that upon the final determination of the said matter that the State of Texas and John Ben Shepperd, the Attorney General for the State of Texas, be permanently enjoined from any further proceedings against the William Buchanan Foundation in the District Court of Bowie County, Texas, with regard to the performance of its contract with the complainant.

3. The complainant have such other and further relief as the Court may deem proper.

4. The complainant have judgment for its cost herein expended.

TOM GENTRY,
Attorney General,
State of Arkansas.

Of Counsel:
H. S. YOCUM,
El Dorado, Arkansas;
W. W. SHARP,
Brinkley, Arkansas;
KAY MATTHEWS,
Little Rock, Arkansas;
E. J. BALL,
Fayetteville, Arkansas.

EXHIBIT A

KNOW ALL MEN BY THESE PRESENTS: That I, William Buchanan of Bowie County, Texas, for the uses and purposes hereinafter set forth, have given, granted, conveyed, assigned and set over, and by these presents do give, grant, convey, assign and set over unto William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim, W. J. Buchanan, Dr. Stanley J. Seeger, Mrs. Helen Buchanan Seeger, A. L. Burford, J. G. Boyce, W. L. Estes, John J. King, A. J. Kizer, Louis Heilbron, John W. Wheeler and F. S. Carroll as Trustees (hereinafter collectively called Trustees) and to their successors in this Trust, all of the following described property (hereinafter called Trust Fund) to-wit:

> Four Hundred Thousand ($400,000.00) Dollars in cash and United States three and one-half per cent. (3½%) 1932-1947 Bonds of the face value of Six Hundred Thousand ($600,000.00) Dollars.

TO HAVE AND TO HOLD unto the said William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim, W. J. Buchanan, Dr. Stanley J. Seeger, Mrs. Helen Buchanan Seeger, A. L. Burford, J. G. Boyce, W. L. Estes, John J. King, Louis Heilbron, A. J. Kizer, John W. Wheeler and F. S. Carroll as Trustees, and unto their successors in this Trust and their assigns forever.

The purpose of this conveyance and delivery of the Trust Fund is to create and endow a charitable enterprise, to be known as "The William Buchanan Foundation" in the city of Texarkana, Texas, under which name and title its activities shall be carried on in the manner and for the uses and purposes following, to-wit:

1. The Trust Fund and the income therefrom shall be held, used and expended by said Trustees and their successors in this Trust for charitable purposes and for the alleviation of suffering and distress, and to that end the Trust Fund may be used for the establishment and maintenance of charitable and benevolent activities, agencies and institutions and for the aid of such activities, agencies and

institutions already established, or expended through such other means or agencies which, from time to time, shall seem expedient to the Trustees and their successors in this Trust. The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said county, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.

2. Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust Fund for the purposes mentioned in this paragraph.

3. The Trustees shall have power to sell, transfer and convey the Trust Fund, or any part thereof, and to invest and reinvest the principal or income therefrom, and to deal with the expend the income and principal of the Trust Fund as in the judgment of the Trustees will best promote the object and purposes of this Trust. Trustees hereafter elected, as hereinafter provided, shall, upon their election, acceptance and qualification, succeed to all the rights, privileges and duties herein conferred on the Trustees above named. The Trustees herein named and their successors shall be deemed as acting in a collective capacity, and in case of the death, resignation or removal of any one of them the title to the Trust Fund, or any part thereof, in any way vested in such Trustee, shall automatically pass to and vest in the remaining and succeeding Trustees.

4. As soon as practicable after the execution hereof, said Trustees shall meet and organize. They shall elect from their membership a President, a Vice President, a Secretary

and a Treasurer (the latter two offices may be filled by the same person) and such other officers as they may deem necessary or proper. Said Trustees shall also have the power and authority to appoint agents and to make and adopt a constitution and such rules, regulations and by-laws as they may deem proper to carry out this Trust, not inconsistent, however, with the provisions hereof.

5. The Trustees and their successors shall have power and authority to organize a corporation if in their judgment it becomes advisable to do so to carry out the purposes of this Trust, or such of said purposes as may be lawfully carried out by a corporation, and to convey the Trust Fund to such corporation, when organized, to be used by such corporation so created as herein provided. If a corporation is formed for administering this Trust, it shall be organized under the name of "The William Buchanan Foundation" and the persons then acting as Trustees shall constitute the first Board of Directors of such corporation.

6. Until and unless a corporation is organized, as herein authorized, William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim and Louis Heilbron shall act as Trustees for a period of three years from the date hereof; W. J. Buchanan, Mrs. Helen Buchanan Seeger, F. S. Carroll, W. L. Estes and John J. King shall act as Trustees for a period of two years from the date hereof; and Dr. Stanley J. Seeger, J. G. Boyce, A. L. Burford, A. J. Kizer and John W. Wheeler shall act as Trustees for a period of one year from the date hereof. At the expiration of the term of each of these groups of Trustees, a like number of Trustees shall be elected to serve for a term of three years, and any Trustees whose terms have expired may be re-elected. All Trustees hereafter elected shall be persons of high intelligence, of good moral character, interested in the purposes for which this Trust is created, and in a position to enter actively upon the duties of said Trustees, as herein contemplated. Said successive Trustees shall be elected by ballot by the affirmative vote of a majority of the Trustees, not including those whose offices are to be filled. In case of a vacancy occurring in said Board of fourteen (14) Trustees here created by death, resignation or otherwise, the remaining Trustees shall fill such vacancy

in the manner herein provided, the Trustee so elected to fill out the unexpired term of his predecessor. If not more than five (5) vacancies occur at any one time in the Board of Trustees, the remaining Trustees shall administer this Trust with all the rights, powers and duties conferred on the Trustees, herein named until such vacancies are filled. All questions arising hereunder shall be decided by a majority vote of the whole Board of Directors.

7. No Trustee shall be liable personally for anything done hereunder, acts or omissions involving dishonesty or moral turpitude excepted. No Trustee or any employee of said Trustees shall receive or legally be entitled to receive any pecuniary profit from the Trust Fund or operations hereunder, except reasonable compensation for services rendered in effecting one or more of the purposes herein mentioned, or as a proper beneficiary of one of the charitable purposes aforesaid.

8. In creating this Trust it has been my aim to establish a Foundation on a basis of such financial soundness, under such competent and conservative management and with the prospect of such great usefulness, that other charitably inclined persons may be led to contribute to its endowment and thus take part in promoting its objects and benefits to humanity. The privilege of participating in this undertaking is therefore extended to any one desiring to lend a helping hand in enlarging its scope and usefulness.

IN TESTIMONY WHEREOF, I have hereunto set my hand this the 9th day of October, 1923.

(Signed) WM. BUCHANAN.

STATE OF TEXAS,
County of Bowie:

Before me, the undersigned authority, on this day personally appeared William Buchanan, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 9th day of October, 1923.

(Signed) A. S. WATLINGTON,
Notary Public, Bowie County, Texas. (Seal)

We, the Trustees above named, hereby acknowledge receipt of the Trust Fund and agree to carry out the terms of this Trust to the best of our skill and ability.

(Signed) WM. BUCHANAN,
HANNAH C. BUCHANAN,
HELEN BUCHANAN SEEGER,
W. J. BUCHANAN,
W. R. GRIM,
W. L. ESTES,
STANLEY J. SEEGER,
A. J. KIZER,
F. S. CARROLL,
J. G. BOYCE,
LOUIS HEILBRON,
JNO. J. KING,
JNO. W. WHEELER,
A. L. BURFORD.

STATE OF TEXAS,
County of Bowie:

Before me, the undersigned authority, in and for the county and state aforesaid, on this day personally appeared William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim, W. J. Buchanan, Dr. Stanley J. Seeger, Mrs. Helen Buchanan Seeger, A. L. Burford, J. G. Boyce, W. L. Estes, John J. King, A. J. Kizer, Louis Heilbron, John W. Wheeler, and F. S. Carroll, known to me to be the persons whose names are subscribed to the foregoing instrument, and severally acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 9th day of October, 1923.

(Signed) A. S. WATLINGTON,
Notary Public, Bowie County, Texas. (Seal)

I, F. S. Carroll, Secretary of the Board of Trustees of The William Buchanan Foundation, do hereby certify that the above and foregoing instrument is a true and correct

copy of the Trust Deed creating The William Buchanan Foundation.

In testimony whereof witness my hand this Feb. 1, 1930.

F. S. CARROLL.

EXHIBIT B

CHARTER OF THE WILLIAM BUCHANAN FOUNDATION

Know All Men by These Presents:

That we, W. L. Estes, Louis Heilbron, Jno. J. King, A. L. Burford and J. G. Boyce, all resident citizens of Texarkana, Texas, for themselves and for and on behalf of the other Trustees hereinafter named, do hereby voluntarily associate ourselves together for the purpose of forming a private corporation.

I

The name of this corporation is "The William Buchanan Foundation."

II

The purpose for which the corporation is formed is the support of any benevolent, charitable or educational undertaking, and, particularly, for the purpose set forth in the Trust Deed creating The Wm. Buchanan Foundation, dated October 9, 1923, executed by the late William Buchanan of Bowie County, Texas, a certified copy of which is attached hereto and made a part hereof.

III

The domicile of this corporation is Texarkana, Bowie County, Texas.

IV

This corporation shall exist for a period of fifty (50) years.

V

The number of trustees of this corporation shall not be less than three (3) nor more than twelve (12). The Trustees selected to serve for the first year are the following:

Name	Address
Stanley J. Seeger	Milwaukee, Wisconsin
J. G. Boyce	Texarkana, Texas
A. L. Burford	Texarkana, Texas
A. J. Kizer	Texarkana, Texas
Jno. W. Wheeler	Texarkana, Texas
Jno. J. King	Texarkana, Texas
W. L. Estes	Texarkana, Texas
F. S. Carroll	Texarkana, Texas
Mrs. Hannah C. Buchanan	Texarkana, Texas
W. J. Buchanan	Texarkana, Texas
Louis Heilbron	Texarkana, Texas
Mrs. Helen Buchanan Seeger	Milwaukee, Wisconsin

The Trustees shall select such officers for the corporation as may be provided by its by-laws.

VI

This corporation shall have no capital stock. The property and assets which shall be transferred to and administered by this corporation consist of cash and negotiable securities aggregating approximately One Million Three Hundred Thousand ($1,300,000.00) Dollars.

In Testimony Whereof, Witness our signatures this the first day of February, 1930.

W. L. Estes,
Louis Heilbron,
Jno. J. King,
A. L. Burford,
J. G. Boyce.

STATE OF TEXAS,
County of Bowie:

Before me, the undersigned authority in and for Bowie County, Texas, on this day personally appeared Louis Heilbron, Jno. J. King, A. L. Burford and J. G. Boyce, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed.

In testimony whereof witness my hand and seal of office this the 1st day of February, 1930.

R. M. BONE,

[SEAL.] *Notary Public, Bowie County, Texas.*

STATE OF TEXAS,
County of Smith:

Before me, the undersigned authority in and for Smith County, Texas, on this day personally appeared W. L. Estes, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

In testimony whereof witness my hand and seal of office this 3rd day of February, 1930.

DAVID WIENTCH,

[SEAL.] *Notary Public, Smith County, Texas.*

EXHIBIT C

THE WILLIAM BUCHANAN FOUNDATION

Texarkana, Texas

February 28, 1950.

Dr. Lewis Webster Jones, President,
University of Arkansas,
Fayetteville, Arkansas.

DEAR SIR:

This will acknowledge your letter of February eighteenth with its enclosures and exhibits in which you made application on behalf of the University of Arkansas for a grant of $500,000 from The William Buchanan Foundation. The funds applied for, together with additional Federal monies, are to be used for the construction of a floor in the new teaching hospital in the University Medical Center. This floor would be known as the William Buchanan Pavilion for Children and would contain one hundred pediatric beds.

This is to advise you that your application has been acted upon favorably by the Foundation. The funds applied for will be granted subject to the following terms and conditions:

1. During the present biennium (June, 1949 through May, 1951) the University of Arkansas will contribute from State sources $1,300,000 for the construction of the teaching hospital. The Federal Government will match this fund on the basis of two dollars of Federal money for each one dollar of State money. In this manner a minimum of $3,900,000 will become available.

2. The William Buchanan Foundation in granting the application herein discussed will make available monies up to a maximum of $500,000. This fund will also be matched by Federal money on the basis of two dollars of Federal money for each one dollar of Foundation money. Thus, when added to the funds referred to in the preceding paragraph, these additional amounts will bring to $5,400,000

the total minimum available funds to be used during the present biennium for the construction of the teaching hospital.

3. Upon receipt of formal notice from the Board of Trustees of the University of Arkansas that this grant is accepted subject to all of the terms and conditions stated herein, the William Buchanan Foundation will cause to be established in The Texarkana National Bank at Texarkana a special fund of $500,000 to the account of the Treasurer, University of Arkansas. This fund may be set up in cash or negotiable securities of a nature mutually acceptable to both the Foundation and the Treasurer of the University. In the event that income-bearing securities are used, it is understood and agreed that any income accruing to such fund shall be paid over by the depository to the William Buchanan Foundation. This fund may be drawn upon by the Treasurer of the University of Arkansas on the following basis: Before construction contracts are executed the extent to which the addition of the fifth or pediatric floor will affect the cost of the other part of the building will be determined by the architects and agreed upon by the University and the Foundation. At the time the construction contracts are executed an amount sufficient to defray this cost may be drawn from the fund. During the actual construction of the fifth floor the remaining amounts may be drawn from the fund except that a balance of $50,000 will be left until construction is completed. All such withdrawals by the Treasurer of the University may be made only after certification by the architects, Edward Stone and Erhart, Eichenbaum and Rauch, that contractor's periodical estimates of completion are approved by them. In the event that construction of the pediatric pavilion and all attendant additional costs in the building proper do not require the expenditure of the full $500,000, any residue will be returned to the William Buchanan Foundation after the construction has been completed.

4. To implement the foregoing plan, the Board of Trustees of the University of Arkansas prior to December 31, 1950, will place a call for competitive bids for the construction of a four hundred bed teaching hospital, such building to be

at the site and constructed according to the general plans submitted with your February 18, 1950 letter of application. One hundred of the beds in this hospital will be pediatric beds to be located on the fifth floor and to be known as the "William Buchanan Pavilion for Children". Thirty-five of the remaining three hundred beds in the hospital are to be additional pediatric beds.

5. In accepting the money referred to herein from the William Buchanan Foundation, the Board of Trustees agrees to operate the new teaching hospital for at least twenty years after the formal opening of said hospital and to operate the one hundred thirty-five pediatric beds referred to in the foregoing paragraphs as pediatric beds during that time subject, of course, to temporary deviation in the event of emergencies. Should the Board of Trustees discontinue such operations during said twenty year period for any cause, the Board of Trustees agrees to reimburse the William Buchanan Foundation the monies transferred under the grant discussed herein on the basis of one-twentieth of the amount contributed for each year of the twenty-year period during which such operations are discontinued.

6. The Board of Trustees of the University of Arkansas at one of its duly convened meetings will pass a formal resolution as follows:

> "WHEREAS, in a letter dated February 18, 1950, the President of the University on behalf of the Board of Trustees has made formal application to the William Buchanan Foundation for a grant of $500,000 for the purpose of constructing a pediatric pavilion in the new teaching hospital to be built in Little Rock as part of the University Medical Center program, and
>
> WHEREAS, in a letter dated February 28, 1950, the William Buchanan Foundation has indicated its willingness to make such grant subject to certain terms and conditions,
>
> BE IT RESOLVED that the $500,000 grant as outlined in the February 28, 1950, letter from the William Buchanan Foundation is hereby accepted subject to all

of the terms and conditions set forth in said letter and it is directed that said letter together with a copy of the complete application from the University be made a part of the permanent file of this Board, and that the terms and conditions of this grant shall be binding upon this Board and any of its legal successors,

BE IT FURTHER RESOLVED that said grant and the Federal funds obtained to match this grant will be used to construct a pediatric pavilion, to be named the "William Buchanan Pavilion for Children," as an integral part of the teaching hospital in the new University of Arkansas Medical Center,

BE IT FURTHER RESOLVED that the William Buchanan Pavilion for Children will be operated and maintained by the Board of Trustees without regard to social or racial backgrounds of the patients."

Very truly yours,

THE WILLIAM BUCHANAN FOUNDATION,
by S. J. SEEGER,
President.

Accepted by the Board of Trustees, University of Arkansas, March 4, 1950.
Mr. Eichenbaum

EXHIBIT D and EXHIBIT F

Excerpt from

MINUTES OF SPECIAL MEETING OF THE BOARD OF TRUSTEES UNIVERSITY OF ARKANSAS, HELD AT THE MARION HOTEL, LITTLE ROCK, MARCH 4, 1950, A 2 P.M.

Moved and carried that the following resolution be adopted:

WHEREAS, in a letter dated February 18, 1950, the President of the University on behalf of the Board of Trustees has made formal application to the William Buchanan Foundation for a grant of $500,000 for the

purpose of constructing a pediatric pavilion in the new teaching hospital to be built in Little Rock as a part of the University Medical Center program, and

WHEREAS, in a letter dated February 28, 1950, the William Buchanan Foundation has indicated its willingness to make such grant subject to certain terms and conditions,

BE IT RESOLVED that the $500,000 grant as outlined in the February 28, 1950, letter from the William Buchanan Foundation is hereby accepted subject to all of the terms and conditions set forth in said letter and it is directed that said letter together with a copy of the complete application from the University be made a part of the permanent file of this Board, and that the terms and conditions of this grant shall be binding upon this Board and any of its legal successors,

BE IT FURTHER RESOLVED that this grant and the Federal funds obtained to match this grant will be used to construct a pediatric pavilion, to be named the "William Buchanan Pavilion for Children" as an integral part of the teaching hospital in the new University of Arkansas Medical Center,

BE IT FURTHER RESOLVED that the William Buchanan Pavilion for Children will be operated and maintained by the Board of Trustees without regard to social or racial backgrounds of the patients.

Excerpt from

MINUTES OF SPECIAL MEETING, BOARD OF TRUSTEES, UNIVERSITY OF ARKANSAS, HELD AT THE ALBERT PIKE HOTEL, LITTLE ROCK, ARKANSAS, ON JANUARY 8, 1951 AT 2:30 P. M.

Moved and carried unanimously to adopt the following resolution:

WHEREAS, in a letter dated February 18, 1950, the President of the University on behalf of the Board of Trustees has made formal application to the William Buchanan Foundation for a grant of $500,000 for the purpose of constructing a pediatric pavilion in the new

teaching hospital to be built in Little Rock as part of the University Medical Center program, and

WHEREAS, this application has previously been granted as evidenced by a letter from the Foundation dated February 28, 1950, and a reply from this Board dated March 11, 1950, which agreement is now recognized as being void and to be superseded by an entirely new agreement referred to hereafter, and

WHEREAS, in a letter dated December 30, 1950, the William Buchanan Foundation has indicated its willingness to agree to make this grant subject to certain amended terms and conditions,

BE IT RESOLVED that the $500,000 grant as outlined in the December 30, 1950, letter from the William Buchanan Foundation is hereby accepted subject to all of the terms and conditions set forth in said letter and it is directed that said letter together with a copy of the complete application from the University be made a part of the permanent file of this Board, and that the terms and conditions of this grant shall be binding upon this Board and any of its legal successors.

BE IT FURTHER RESOLVED that said grant and the Federal, State, or private funds from other mutually agreeable private sources obtained to match this grant will be used to construct a pediatrics pavilion, to be named the "William Buchanan Pavilion for Children", as an integral part of the teaching hospital in the new University of Arkansas Medical Center,

BE IT FURTHER RESOLVED that the William Buchanan Pavilion for Children will be operated and maintained by the Board of Trustees without regard to social or racial backgrounds of the patients.

I hereby certify this to be a true and correct copy.

T. C. Carlson,
Secretary
Board of Trustees.

May 1, 1953

EXHIBIT E

"EXHIBIT C"

(Copies of Letters Constituting an Agreement Entered into by The William Buchanan Foundation and The University of Arkansas).

December 30, 1950.

Dr. Lewis Webster Jones, President
University of Arkansas
Fayetteville, Arkansas

DEAR SIR:

Reference is made to the letter agreement embodied in the February 28, 1950 letter from the undersigned to you and the reply dated March 11, 1950, signed by T. C. Carlson on behalf of the Board of Trustees of the University of Arkansas. Reference is also here made to the other documents referred to in said letters.

In view of changed circumstances, the William Buchanan Foundation and the Board of Trustees of the University of Arkansas hereby agree to cancel said agreement in its entirety and substitute therefor a new and separate contract, the terms of which are set forth hereinafter and in your letter of acceptance.

Your letter of February 18, 1950, with its enclosures and exhibits contained the application of the University of Arkansas for a grant of $500,000 from the William Buchanan Foundation. The funds applied for, together with additional monies to be supplied from Federal, State or other mutually agreeable private sources, are to be used for the construction of a floor in the new teaching hospital in the University Medical Center. This floor would be known as the William Buchanan Pavilion for Children and would contain one hundred pediatric beds. This is to advise you that the funds applied for will be granted subject to the following terms and conditions:

1. During the present biennium (June, 1949 through May, 1951) the University of Arkansas will contribute from State sources at least $1,300,000 for the construction of the teach-

ing hospital. The Federal Government, the State Government, or other mutually agreeable private sources will furnish additional money to match this fund on the basis of two to one. In this manner a minimum of $3,900,000 will become available.

2. The William Buchanan Foundation in granting the application herein discussed will make available monies up to a maximum of $500,000. This fund will also be matched by money from Federal, State, or mutually agreeable private sources in addition to the funds referred to in the preceding paragraph, on the basis of two to one. In this manner an additional $1,500,000 will be made available for the specific purpose of adding an extra pediatric floor to the new teaching hospital in the University Medical Center. Thus, when added to the funds referred to in the preceding paragraph, these additional amounts will bring to $5,400,000 the total minimum available funds to be used for the construction of the teaching hospital. The William Buchanan Foundation will not be under any obligation to contribute any part of this $500,000 grant unless and until the entire balance of the $5,400,000 has been definitely appropriated and made available for this construction.

3. Upon receipt of formal notice from the Board of Trustees of the University of Arkansas that this grant is accepted subject to all of the terms and conditions stated herein, the William Buchanan Foundation will stand ready to make the grant available according to a mutually agreeable procedure which will enable the fund to be drawn upon by the Treasurer of the University of Arkansas on the following basis: Before construction contracts are executed the extent to which the addition of the sixth or pediatric floor will affect the cost of the other part of the building will be determined by the architects and agreed upon by the University and the Foundation. When construction is actually begun on the sixth or pediatric floor, an amount sufficient to defray this cost may be drawn from the fund. During the actual construction of the sixth floor the remaining amounts may be drawn from the fund except that a balance of $50,000 will be left until construction is completed. All such withdrawals by the Treasurer of the Uni-

versity may be made only after certification by the architects, Edward Stone and Erhart, Eichenbaum and Rauch, that contractor's periodical estimates of completion are approved by them. In the event that construction of the pediatric pavilion and all attendant additional costs in the building proper do not require the expenditure of the full $500,000, any residue will be returned to the William Buchanan Foundation after the construction has been completed.

4. To implement the foregoing plan, the Board of Trustees of the University of Arkansas prior to June 30, 1951, will place a call for competitive bids for the construction of a four hundred bed teaching hospital, such building to be at the site and constructed according to the general plans submitted with your February 18, 1950 letter of application. One hundred of the beds in this hospital will be pediatric beds to be located on the sixth floor and to be known as the "William Buchanan Pavilion for Children". Thirty-five of the remaining three hundred beds in the hospital are to be additional pediatric beds.

5. In accepting the money referred to herein from the William Buchanan Foundation, the Board of Trustees agrees to operate the new teaching hospital for at least twenty years after the formal opening of said hospital and to operate the one hundred thirty-five pediatric beds referred to in the foregoing paragraphs as pediatric beds during that time subject, of course, to temporary deviation in the event of emergencies. Should the Board of Trustees discontinue such operations during said twenty-year period for any cause, the Board of Trustees agrees to reimburse the William Buchanan Foundation the monies transferred under the grant discussed herein on the basis of one-twentieth of the amount contributed for each year of the twenty-year period during which such operations are discontinued.

6. The Board of Trustees of the University of Arkansas at one of its duly convened meetings will pass a formal resolution as follows:

"WHEREAS, in a letter dated February 18, 1950 the President of the University on behalf of the Board

of Trustees has made formal application to the William Buchanan Foundation for a grant of $500,000 for the purpose of constructing a pediatric pavilion in the new teaching hospital to be built in Little Rock as part of the University Medical Center program, and

WHEREAS, this application has previously been granted as evidenced by a letter from the Foundation dated February 28, 1950, and a reply from this Board dated March 11, 1950, which agreement is now recognized as being void and to be superceded by an entirely new agreement referred to hereafter, and

WHEREAS, in a letter dated December 30, 1950, the William Buchanan Foundation has indicated its willingness to agree to make this grant subject to certain amended terms and conditions.

BE IT RESOLVED that the $500,000 grant as outlined in the December 30, 1950, letter from the William Buchanan Foundation is hereby accepted subject to all of the terms and conditions set forth in said letter and it is directed that said letter together with a copy of the complete application from the University be made a part of the permanent file of this Board, and that the terms and conditions of this grant shall be binding upon this Board and any of its legal successors,

BE IT FURTHER RESOLVED that said grant and the Federal, State, or funds from other mutually agreeable private sources obtained to match this grant will be used to construct a pediatric pavilion, to be named the 'William Buchanan Pavilion for Children', as an integral part of the teaching hospital in the new University of Arkansas Medical Center,

BE IT FURTHER RESOLVED that the William Buchanan Pavilion for Children will be operated and maintained by the Board of Trustees without regard to social or racial backgrounds of the patients."

Very truly yours,

THE WILLIAM BUCHANAN FOUNDATION,

By ——— ———,

President.

Office of the Vice President
for Finance

January 15, 1951

Dr. S. J. Seeger
President
The William Buchanan Foundation
930 Mercantile Bank Building
Dallas, Texas

Dear Dr. Seeger:

Your proposal of December 30, 1950, addressed to President Lewis Webster Jones, was presented to the Board of Trustees of the University of Arkansas at its meeting in Little Rock on January 8, 1951. The Board requested me, as Secretary, to express to you and to the members of the governing board of the William Buchanan Foundation its appreciation of your generous action.

The Board of Trustees of the University of Arkansas passed the following resolution unanimously:

"WHEREAS, in a letter dated February 18, 1950, the President of the University on behalf of the Board of Trustees has made formal application to the William Buchanan Foundation for a grant of $500,000 for the purpose of constructing a pediatric pavilion in the new teaching hospital to be built in Little Rock as part of the University Medical Center program, and

WHEREAS, this application has previously been granted as evidenced by a letter from the Foundation dated February 28, 1950, and a reply from this Board dated March 11, 1950, which agreement is now recognized as being void and to be superceded by an entirely new agreement referred to hereafter, and

WHEREAS, in a letter dated December 30, 1950, the William Buchanan Foundation has indicated its willingness to agree to make this grant subject to certain amended terms and conditions,

BE IT RESOLVED that the $500,000 grant as outlined in the December 30, 1950, letter from the William Buchanan Foundation is hereby accepted subject to all of the terms and conditions set forth in said letter and it is

directed that said letter together with a copy of the complete application from the University be made a part of the permanent file of this Board, and that the terms and conditions of this grant shall be binding upon this Board and any of its legal successors,

BE IT FURTHER RESOLVED that said grant and the Federal, State, or funds from other mutually agreeable private sources obtained to match this grant will be used to construct a pediatric pavilion, to be named the 'William Buchanan Pavilion for Children', as an integral part of the teaching hospital in the new University of Arkansas Medical Center,

BE IT FURTHER RESOLVED that the William Buchanan Pavilion for Children will be operated and maintained by the Board of Trustees without regard to social or racial backgrounds of the patients."

Yours very truly,

T. C. CARLSON,
Secretary, Board of Trustees.

EXHIBIT G

IN THE 102ND DISTRICT COURT OF BOWIE COUNTY, TEXAS

THE STATE OF TEXAS,
County of Bowie:

To the Honorable Judge of Said Court:

Now comes Price Daniel, the duly elected, qualified and acting Attorney General of the State of Texas, hereinafter called Plaintiff, complaining of The William Buchanan Foundation, and of Mrs. Helen B. Seeger, James G. Boyce, John W. O'Boyle, Mrs. Mary Seeger O'Boyle, Mrs. Hannah Seeger Davis, F. S. Carroll, and William G. Fuller in their capacity as trustees of The William Buchanan Founda-

tion, hereinafter called Defendants, and for cause of action respectfully shows the Court as follows:

I

That Plaintiff, as the duly elected, qualified and acting Attorney General of the State of Texas, is charged with the duty of seeing that all trusts or gifts for general charitable or religious purposes are faithfully administered according to the intent of the settlors or donors and that the purposes of such trusts or gifts are fully effectuated.

II

That Defendant The William Buchanan Foundation is a private corporation duly organized and existing under the laws of the State of Texas, having its domicile and principal place of business in Bowie County, Texas; that Defendants Mrs. Helen B. Seeger, James G. Boyce, John W. O'Boyle, Mrs. Mary Seeger O'Boyle, and Mrs. Hannah Seeger Davis are duly elected, qualified and acting trustees of The William Buchanan Foundation and are all residents of Dallas County, Texas; that Defendants F. S. Carroll and William G. Fuller are duly elected, qualified and acting trustees of The William Buchanan Foundation and are residents of Bowie County, Texas.

III

That on the 9th day of October, 1923, William Buchanan executed a trust instrument, a certified copy of which instrument, as filed with the Secretary of State of the State of Texas, is attached hereto and made a part hereof as "Exhibit A" as completely and as fully as if copied verbatim herein.

IV

That by said trust instrument William Buchanan granted, conveyed, assigned and set over unto certain named trustees and their successors in the trust to have and to hold forever Four Hundred Thousand ($400,000.00) Dollars in cash and United States three and one-half per cent (3½%)

bonds of the face value of Six Hundred Thousand ($600,000.00) Dollars; and Plaintiff avers on information and belief that the corpus of said trust fund is now approximately Two and One-Half Million ($2,500,000.00) Dollars.

V

That, among other provisions, the trust instrument contains the following:

"The purpose of this conveyance and delivery of the Trust Fund is to create and endow a charitable enterprise, to be known as 'The William Buchanan Foundation' in the city of Texarkana, Texas, under which name and title its activities shall be carried on in the manner and for the uses and purposes following, to-wit:

"1. The Trust Fund and the income therefrom shall be held, used and expended by said Trustees and their successors in this Trust for charitable purposes and for the alleviation of suffering and distress, and to that end the Trust Fund may be used for the establishment and maintenance of charitable and benevolent activities, agencies and institutions and for the aid of such activities, agencies and institutions already established, or expended through such other means or agencies which, from time to time, shall seem expedient to the Trustees and their successors in this Trust. The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said county, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.

"2. Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's

hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust Fund for the purposes mentioned in this paragraph.

" * * *

"5. The Trustees and their successors shall have power and authority to organize a corporation if in their judgment it becomes advisable to do so to carry out the purposes of this Trust, or such of said purposes as may be lawfully carried out by a corporation, and to convey the Trust Fund to such corporation, when organized, to be used by such corporation so created as herein provided. If a corporation is formed for administering this Trust, it shall be organized under the name of 'The William Buchanan Foundation' and the persons then acting as Trustees shall constitute the first Board of Directors of such corporation."

VI

That the above quoted language of the trust instrument is plain and unambiguous in its direction that the primary beneficiaries of the trust be the residents of Bowie County, Texas and of the adjoining counties, and that the charitable institutions, agencies, means, and activities contemplated by said instrument be established, administered, pursued and carried out in Bowie County, Texas.

VII

That, alternatively, if the above quoted language be deemed ambiguous, a proper construction of said language necessitates the conclusion that the settlor intended the residents of Bowie County, Texas and of the adjoining counties to be the primary beneficiaries of the trust, and that he further intended that the charitable institutions, agencies, means and activities through which the purposes of the

trust were to be effectuated be established, administered, pursued and carried out in Bowie County, Texas.

VIII

That The William Buchanan Foundation was chartered February 8, 1930, and that a copy of the charter of said Foundation is attached hereto as "Exhibit A" and made a part hereof as fully as if copied verbatim herein.

IX

That paragraph II of the charter of The William Buchanan Foundation reads as follows:

> "The purpose for which the corporation is formed is the support of any benevolent, charitable or educational undertaking, and, particularly, for the purpose set forth in the Trust Deed creating The Wm. Buchanan Foundation, dated October 9, 1923, executed by the late William Buchanan of Bowie County, Texas, a certified copy of which is attached hereto and made a part hereof."

X

That that part of the purpose clause of the charter of The William Buchanan Foundation above quoted which states that the corporation is formed for the purpose of supporting "any benevolent, charitable or educational undertaking" is at variance with the clear directions of the settlor in the trust instrument, and that a corporation formed to carry out the purposes of The William Buchanan Trust could not include said purpose.

XI

That it is wrongfully contended by the Defendants that the primary beneficiaries of the charitable trust created by William Buchanan are not limited to the residents of Bowie County, Texas and of the adjoining counties but may be drawn from any portion of the United States or of the world to the exclusion of the residents of Bowie and adjoining counties.

XII

That Defendants also wrongfully contend that the charitable institutions, agencies, means, and activities authorized by the trust instrument need not be established, administered, pursued, and carried out in Bowie County, but that such institutions, agencies, means, and activities may be established, administered, pursued and carried out in any portion of the United States or of the world.

XIII

That in accordance with Defendants' interpretation of the trust instrument, they have heretofore made expenditures from the trust fund for the benefit of the following institutions and agencies outside Bowie County, Texas:

(1) Five Thousand ($5,000.00) Dollars to The Texas Eleemosynary Commission for the purpose of making a survey of the care of the mentally sick in Texas.

(2) Approximately Thirty Thousand Seven Hundred Sixty-Eight ($30,768.00) Dollars to the Southwestern Medical School of The University of Texas at Dallas for the development and maintenance of a research laboratory.

(3) One Thousand Eight Hundred Thirty-Six and 84/100ths ($1,836.84) Dollars to The Council of Social Agencies for a survey of Dallas County's health facilities for children.

(4) Two Hundred Thousand ($200,000.00) Dollars to the Medical Branch of The University of Texas for the support of a Child Health Program.

(5) Five Hundred ($500.00) Dollars to Dr. Chauncey D. Leake, Dean of The University of Texas Medical Branch in Galveston, for expenses incident to securing a Director for said Child Health Program.

XIV

That Defendants also have agreed to contribute Five Hundred Thousand ($500,000.00) Dollars to The University

of Arkansas to be used for the construction of a floor in the new teaching hospital being built in Little Rock, Arkansas as part of the University Medical Center program and approximately Thirty-Eight Thousand ($38,000.00) Dollars to the Southwestern Medical School of The University of Texas at Dallas for the development and maintenance of a research laboratory.

XV

That since the Trust was created, the only sums expended thereunder in Bowie or surrounding counties, have totaled Sixteen Thousand Six Hundred ($16,600.00) Dollars, of which amount Thirteen Thousand ($13,000.00) Dollars was contributed to the purchase of the Bowie County Health Unit and Three Thousand Six Hundred ($3,600.00) Dollars was contributed to the Bowie County Child Welfare Board.

XVI

That Plaintiff avers that it is the purpose and intention of Defendants The William Buchanan Foundation and the trustees thereof, unless restrained by this Honorable Court, to continue the expenditure and dissipation of the trust funds outside of Bowie County, in contravention of the settlor's charitable purpose and intent announced in the trust instrument. Plaintiff fears and therefore avers that said Defendants will take all of the aforesaid steps at some indefinite time in the future so that Plaintiff will be unable to discharge his duty of seeing that this public charitable trust is faithfully administered according to the intent of the settlor and its purpose fully effectuated.

XVII

That among other provisions the trust instrument contains the following:

> "5. The Trustees and their successors shall have power and authority to organize a corporation if in their judgment it becomes advisable to do so to carry out the purposes of this Trust, or such of said purposes as may be lawfully carried out by a corporation

and to convey the Trust Fund to such corporation, when organized, to be used by such corporation so created as herein provided. If a corporation is formed for administering this trust, it shall be organized under the name of 'The William Buchanan Foundation' and the persons then acting as Trustees shall constitute the first Board of Directors of such corporation.

"6. Until and Unless a corporation is organized, as herein authorized, William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim and Louis Heilbron shall act as Trustees for a period of three years from the date hereof; W. J. Buchanan, Mrs. Helen Buchanan Seeger, F. S. Carroll, W. L. Estes and John J. King shall act as Trustees for a period of two years from the date hereof, and Dr. Stanley J. Seeger, J. G. Boyce, A. L. Burford, A. J. Kizer and John W. Wheeler shall act as Trustees for a period of one year from the date hereof. At the expiration of the term of each of these groups of Trustees, a like number of Trustees shall be elected to serve for a term of three years, and any Trustees whose terms have expired may be re-elected. All Trustees hereafter elected shall be persons of high intelligence, of good moral character, interested in the purposes for which this Trust is created, and in a position to enter actively upon the duties of said Trustees, as herein contemplated. Said successive Trustees shall be elected by ballot by the affirmative vote of a majority of the Trustees, not including those whose offices are to be filled. In case of a vacancy occurring in said Board of fourteen (14) Trustees here created by death, resignation or otherwise, the remaining Trustees shall fill such vacancy in the manner herein provided, the trustee so elected to fill out the unexpired term of his predecessor. If not more than five (5) vacancies occur at any one time in the Board of Trustees, the remaining Trustees shall administer this Trust with all the rights, powers and duties conferred on the Trustees herein named until such vacancies are filled. All questions arising hereunder shall be decided by a majority vote of the whole Board of Directors."

XVIII

That, contrary to the express directions of the settlor, paragraph 5 of the Charter of The William Buchanan Foundation provides, in part, as follows:

"The number of trustees of this corporation shall be not less than three (3) nor more than twelve (12) . . ."

XIX

That contrary to the express directions of the settlor there have been until recently only eight trustees of The William Buchanan Foundation and that there are presently only seven trustees of said Foundation.

XX

That under the laws of this State this Court has jurisdiction to construe a charitable trust, to determine the beneficiaries, and to declare the duties of the trustees thereof.

Wherefore, Plaintiff prays that this Court take jurisdiction of the parties and the subject matter of this cause; that the Court by its decree herein find and declare that the primary beneficiaries of the trust created by William Buchanan are the residents of Bowie County, Texas and of the adjoining counties, and that the charitable institutions, agencies, means and activities authorized by the trust instrument must be established, administered, pursued and carried out in Bowie County, Texas; that Defendant The William Buchanan Foundation, its trustees, agents, servants and employees be enjoined from expending any further sums of money for the construction, furnishing or maintenance of buildings or institutions outside of Bowie County; that the Defendant The William Buchanan Foundation and the trustees thereof be directed to comply in the future with the settlor's directions and limitations on the charitable activities provided for in the trust instrument; that the Court appoint two trustees and that the newly appointed trustees and the present trustees be directed to forthwith amend the charter of The William Buchanan

Foundation by changing the purpose clause to conform with the purposes set forth in the trust instrument and by requiring that there be fourteen (14) trustees of said Foundation; that the Court further direct the trustees to proceed immediately to elect five (5) additional trustees and to comply in the future with the settlor's requirement as to the number and manner of electing trustees; for general relief, and for costs of suit.

PRICE DANIEL,
Attorney General of Texas
WILLIAM P. HOLLOWAY,
MARIETTA MCGREGOR CREEL,
Assistant Attorneys General
Attorneys for Plaintiff
Capitol Station
Austin, Texas

CHARTER OF THE WILLIAM BUCHANAN FOUNDATION

Know All Men By These Presents:

That we, W. L. Estes, Louis Heilbron, Jno. J. King, A. L. Burford and J. G. Boyce, all resident citizens of Texarkana, Texas, for themselves and for and on behalf of the other Trustees hereinafter named, do hereby voluntarily associate ourselves together for the purpose of forming a private corporation.

I

The name of this corporation is "The William Buchanan Foundation."

II

The purpose for which the corporation is formed is the support of any benevolent, charitable or educational undertaking, and, particularly, for the purpose set forth in the Trust Deed creating The Wm. Buchanan Foundation, dated October 9, 1923, executed by the late William Buchanan of Bowie County, Texas, a certified copy of which is attached hereto and made a part hereof.

III

The domicile of this corporation is Texarkana, Bowie County, Texas.

IV

This corporation shall exist for a period of fifty (50) years.

V

The number of trustees of this corporation shall not be less than three (3) nor more than twelve (12). The Trustees selected to serve for the first year are the following:

NAME	ADDRESS
Stanley J. Seeger,	Milwaukee, Wisconsin.
J. G. Boyce,	Texarkana, Texas.
A. L. Burford,	Texarkana, Texas.
A. J. Kizer,	Texarkana, Texas.
Jno. W. Wheeler,	Texarkana, Texas.
Jno. J. King,	Texarkana, Texas.
W. L. Estes,	Texarkana, Texas.
F. S. Carroll,	Texarkana, Texas.
Mrs. Hannah C. Buchanan,	Texarkana, Texas.
W. J. Buchanan,	Texarkana, Texas.
Louis Heilbron,	Texarkana, Texas.
Mrs. Helen Seeger,	Milwaukee, Wisconsin.

The Trustees shall select such officers for the corporation as may be provided by its by-laws.

VI

This corporation shall have no capital stock. The property and assets which shall be transferred to and administered by this corporation consist of cash and negotiable securities aggregating approximately One Million Three Hundred Thousand ($1,300,000.00) Dollars.

In Testimony Wherefor, Witness our signatures this the first day of February, 1930.

W. L. Estes,
Louis Heilbron,
Jno. J. King,
A. L. Burford,
J. G. Boyce.

STATE OF TEXAS,
County of Bowie:

Before me, the undersigned authority in and for Bowie County, Texas, on this day personally appeared Louis Heilbron, Jno. J. King, A. L. Burford and J. G. Boyce, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed.

In testimony whereof witness my hand and seal of office this the 1st day of February 1930.

R. M. BONE,
Notary Public, Bowie County, Texas.

STATE OF TEXAS,
County of Smith:

Before me, the undersigned authority in and for Smith County, Texas, on this day personally appeared W. L. Estes, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

In testimony whereof witness my hand and seal of office this the 3rd day of February, 1930.

DAVID WIENTCH,
Notary Public, Smith County, Texas.

KNOW ALL MEN BY THESE PRESENTS That I, William Buchanan of Bowie County, Texas, for the uses and purposes hereinafter set forth, have given, granted, conveyed, assigned and set over, and by these presents do give, grant, convey, assign and set over unto William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim, W. J. Buchanan, Dr. Stanley J. Seeger, Mrs. Helen Buchanan Seeger, A. L. Burford, J. G. Boyce, W. L. Estes, John J. King, A. J. Kizer, Louis Heilbron, John W. Wheeler and F. S. Carroll as Trustees (hereinafter collectively called Trustees) and to

their successors in this Trust, all of the following described property (hereinafter called Trust Fund) to-wit:

Four Hundred Thousand ($400,000.00) Dollars in cash and United States three and one-half per cent. (3½%) 1932-1947 Bonds of the face value of Six Hundred Thousand ($600,000.00) Dollars.

TO HAVE AND TO HOLD unto the said William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim, W. J. Buchanan, Dr. Stanley J. Seeger, Mrs. Helen Buchanan Seeger, A. L. Burford, J. G. Boyce, W. L. Estes, John J. King, Louis Heilbron, A. J. Kizer, John W. Wheeler and F. S. Carroll as Trustees, and unto their successors in this Trust and their assigns forever.

The purpose of this conveyance and delivery of the Trust Fund is to create and endow a charitable enterprise, to be known as "The William Buchanan Foundation" in the city of Texarkana, Texas, under which name and title its activities shall be carried on in the manner and for the uses and purposes following, to-wit:

1. The Trust Fund and the income therefrom shall be held, used and expended by said Trustees and their successors in this Trust for charitable purposes and for the alleviation of suffering and distress, and to that end the Trust Fund may be used for the establishment and maintenance of charitable and benevolent activities, agencies and institutions and for the aid of such activities, agencies and institutions already established, or expended through such other means or agencies which, from time to time, shall seem expedient to the Trustees and their successors in this Trust. The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said county, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.

2. Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the pre-

ceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust Fund for the purposes mentioned in this paragraph.

3. The Trustees shall have power to sell, transfer and convey the Trust Fund, or any part thereof, and to invest and reinvest the principal or income therefrom, and to deal with and expend the income and principal of the Trust Fund as in the judgment of the Trustees will best promote the object and purposes of this Trust. Trustees hereafter elected, as hereinafter provided, shall, upon their election, acceptance and qualification, succeed to all the rights, privileges and duties herein conferred on the Trustees above named. The Trustees herein named and their successors shall be deemed as acting in a collective capacity, and in case of the death, resignation or removal of any one of them the title to the Trust Fund, or any part thereof, in any way vested in such Trustee, shall automatically pass to and vest in the remaining and succeeding Trustees.

4. As soon as practicable after the execution hereof, said Trustee shall meet and organize. They shall elect from their membership a President, a Vice President, a Secretary and a Treasurer (the latter two offices may be filled by the same person) and such other officers as they may deem necessary or proper. Said Trustees shall also have the power and authority to appoint agents and to make and adopt a constitution and such rules, regulations and by-laws as they may deem proper to carry out this Trust, not inconsistent, however, with the provisions hereof.

5. The Trustees and their successors shall have power and authority to organize a corporation if in their judgment it becomes advisable to do so to carry out the purposes of this Trust, or such of said purposes as may be lawfully carried out by a corporation, and to convey the Trust Fund

to such corporation, when organized, to be used by such corporation so created as herein provided. If a corporation is formed for administering this Trust, it shall be organized under the name of "The William Buchanan Foundation" and the persons then acting as Trustees shall constitute the first Board of Directors of such corporation.

6. Until and unless a corporation is organized, as herein authorized, William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim and Louis Heilbron shall act as Trustees for a period of three years from the date hereof; W. J. Buchanan, Mrs. Helen Buchanan Seeger, F. S. Carroll, W. L. Estes and John J. King shall act as Trustees for a period of two years from the date hereof; and Dr. Stanley J. Seeger, J. G. Boyce, A. L. Burford, A. J. Kizer and John W. Wheeler shall act as Trustees for a period of one year from the date hereof. At the expiration of the term of each of these groups of Trustees, a like number of Trustees shall be elected to serve for a term of three years, and any Trustees whose terms have expired may be re-elected. All Trustees hereafter elected shall be persons of high intelligence, of good moral character, interested in the purposes for which this Trust is created, and in a position to enter actively upon the duties of said Trustees, as herein contemplated. Said successive Trustees shall be elected by ballot by the affirmative vote of a majority of the Trustees, not including those whose offices are to be filled. In case of vacancy occurring in said Board of fourteen (14) Trustees here created by death, resignation or otherwise, the remaining Trustees shall fill such vacancy in the manner herein provided, the Trustee so elected to fill out the unexpired term of his predecessor. If not more than five (5) vacancies occur at any one time in the Board of Trustees, the remaining Trustees shall administer this Trust with all the right, powers and duties conferred on the Trustees herein named until such vacancies are filled. All questions arising hereunder shall be decided by a majority vote of the whole Board of Directors.

7. No Trustees shall be liable personally for anything done hereunder, acts or omissions involving dishonesty or moral turpitude excepted. No trustee or any employee of

said Trustees shall receive or legally be entitled to receive any pecuniary profit from the Trust Fund or operations hereunder, except reasonable compensation for services rendered in effecting one or more of the purposes herein mentioned, or as a proper beneficiary of one of the charitable purposes aforesaid.

8. In creating this Trust it has been my aim to establish a Foundation on a basis of such financial soundness, under such competent and conservative management and with the prospect of such great usefulness, that other charitably inclined persons may be led to contribute to its endowment and thus take part in promoting its objects and benefits to humanity. The privilege of participating in this undertaking is therefore extended to any one desiring to lend a helping hand in enlarging its scope and usefulness.

In Testimony Whereof, I have hereunto set my hand this the 9th day of October, 1923.

(Signed) Wm. Buchanan

State of Texas,
County of Bowie:

Before me, the undersigned authority, on this day personally appeared William Buchanan, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 9th day of October, 1923.

(Signed) A. S. Watlington,
(seal) *Notary Public, Bowie County, Texas.*

We, the Trustees above named, hereby acknowledge receipt of the Trust Fund and agree to carry out the terms of this Trust to the best of our skill and ability.

(Signed) Wm. Buchanan,
Hannah C. Buchanan,
Helen Buchanan Seeger,
W. J. Buchanan,
W. R. Grim,
W. L. Estes,
Stanley J. Seeger,
A. J. Kizer,
F. S. Carroll,
J. G. Boyce,
Louis Heilbron,
Jno. J. King,
Jno. W. Wheeler,
A. L. Burford.

STATE OF TEXAS,
County of Bowie:

Before me, the undersigned authority, in and for the county and state aforesaid, on this day personally appeared William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim, W. J. Buchanan, Dr. Stanley J. Seeger, Mrs. Helen Buchanan Seeger, A. L. Burford, J. G. Boyce, W. L. Estes, John J. King, A. J. Kizer, Louis Heilbron, John W. Wheeler, and F. S. Carroll, known to me to be the persons whose names are subscribed to the foregoing instrument, and severally acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 9th day of October, 1923.

(SEAL) (Signed) A. S. WATLINGTON,
Notary Public, Bowie County, Texas.

I, F. S. Carroll, Secretary of the Board of Trustees of The William Buchanan Foundation, do hereby certify that the above and foregoing instrument is a true and correct copy of the Trust Deed creating The William Buchanan Foundation.

In Testimony whereof witness my hand this Feb. 1, 1930.

F. S. CARROLL.

EXHIBIT H

No. 010437-A

IN THE 102ND DISTRICT COURT OF BOWIE COUNTY, TEXAS

JOHN BEN SHEPPERD, ATTORNEY GENERAL OF TEXAS,

v.

THE WILLIAM BUCHANAN FOUNDATION, ET AL.

To the Honorable Judge of Said Court:

Now comes John Ben Shepperd, the duly elected, qualified and acting Attorney General of the State of Texas, hereinafter called Plaintiff, and files this his first amended orig-

inal petition in lieu of his original petition filed herein on the 14th day of November, 1952, complaining of The William Buchanan Foundation, and of Mrs. Helen B. Seeger, James G. Boyce, John W. O'Boyle, Mrs. Mary Seeger O'Boyle, Mrs. Hannah Seeger Davis, F. S. Carroll, William G. Fuller, Mrs. Olivia S. Moore, Mrs. Emiline Grim Fuller, Stanley J. Seeger, Jr. and James D. Heldt in their capacity as trustees of The William Buchanan Foundation; and of the Board of Regents of The University of Texas, and of Dudley K. Woodward, Jr., David M. Warren, Mrs. Margaret Batts Tobin, Claude W. Voyles, Dr. L. S. Oates, Tom Sealy, Lee Lockwood, J. R. Sorrell, and Leroy Jeffers in their capacity as members of the Board of Regents of The University of Texas; and of the Board of Trustees of The University of Arkansas and of L. C. Carter, Pauline Hoeltzel, Wilie T. Jones, P. E. Murphy, Earl Williams, W. W. Sharp, Jack Stephens, Henry S. Yocum, Baron Lange, and Dr. Carl A. Rosenbaum in their capacity as members of the Board of Trustees of The University of Arkansas, hereinafter called Defendants, and for cause of action respectfully shows the Court as follows:

I

Plaintiff, as the duly elected, qualified and acting Attorney General of the State of Texas, is charged with the duty of seeing that all trusts or gifts for general charitable or religious purposes are faithfully administered according to the intent of the settlors or donors and that the purposes of such trusts or gifts are fully effected.

II

Defendant, The William Buchanan Foundation, is a private corporation duty organized and existing under the laws of the State of Texas, having its domicile and principal place of business in Bowie County, Texas; Defendants, Mrs. Helen B. Seeger, James G. Boyce, John W. O'Boyle, Mrs. Mary Seeger O'Boyle, Mrs. Hannah Seeger Davis, James D. Heldt, and Stanley J. Seeger, Jr. are duly elected, qualified and acting trustees of The William Buchanan Foundation and are all residents of Dallas

County, Texas; Defendants, F. S. Carroll, Mrs. Emiline Grim Fuller and Mrs. Olivia S. Moore are duly elected, qualified and acting trustees of The William Buchanan Foundation and are residents of Bowie County, Texas; Defendant, William G. Fuller, is a duly elected, qualified and acting trustee of The William Buchanan Foundation and is a resident of Miller County, Arkansas; Defendant members of the Board of Regents are the duly appointed, qualified and acting members of the Board of Regents of The University of Texas, and service may be had upon the Chairman of said Board, Tom Sealy, who resides in Midland County, Texas; Defendant members of the Board of Trustees are the duly appointed, qualified and acting members of the Board of Trustees of The University of Arkansas, and service may be had upon the Chairman of said Board, Henry S. Yocum, who resides in Union County, Arkansas.

III

On the 9th day of October, 1923, William Buchanan executed a trust instrument, a certified copy of which instrument, as filed with the Secretary of State of the State of Texas, is attached hereto and made a part hereof as "Exhibit A" as completely and fully as if copied verbatim herein.

IV

By said trust instrument, William Buchanan granted, conveyed, assigned and set over unto certain named trustees and their successors in the trust to have and to hold, forever, Four Hundred Thousand ($400,000.00) Dollars in cash, and United States three and one-half per cent (3½%) bonds of the face value of Six Hundred Thousand ($600,000.00) Dollars; and Plaintiff avers on information and belief that the corpus of said trust fund is now approximately Two and One-Half Million ($2,500,000.00) Dollars.

V

Among other provisions, the trust instrument contains the following:

"The purpose of this conveyance and delivery of the Trust Fund is to create and endow a charitable enter-

prise, to be known as 'The William Buchanan Foundation' in the city of Texarkana, Texas, under which name and title its activities shall be carried on in the manner and for the uses and purposes following, to-wit:

"1. The Trust Fund and the income therefrom shall be held, used and expended by said Trustees and their successors in this Trust for charitable purposes and for the alleviation of suffering and distress, and to that end the Trust Fund may be used for the establishment and maintenance of charitable and benevolent activities, agencies and institutions and for the aid of such activities, agencies and institutions already established, or expended through such other means or agencies which from time to time, shall seem expedient to the Trustees and their successors in this Trust. *The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said County, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.*

"2. Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust Fund for the purposes mentioned in this paragraph.

". . .

"5. The Trustees and their successors shall have power and authority to organize a corporation if in their judgment it becomes advisable to do so to carry

out the purposes of this Trust, or such of said purposes as may be lawfully carried out by a corporation, and to convey the Trust Fund to such corporation, when organized, to be used by such corporation so created as herein provided. If a corporation is formed for administering this trust, it shall be organized under the name of 'The William Buchanan Foundation' and the persons then acting as Trustees shall constitute the first Board of Directors of such corporation." (Emphasis added.)

VI

The above quoted language of the trust instrument is plain and unambiguous in its direction that the primary beneficiaries of the trust be the residents of Bowie County, Texas and of the adjoining counties, and that the charitable institutions, agencies, means and activities contemplated by said instrument be established, administered, pursued and carried out in Bowie County, Texas.

VII

Alternatively, if the above quoted language be deemed ambiguous, a proper construction of said language necessitates the conclusion that the settlor intended the residents of Bowie County, Texas and of the adjoining counties to be the primary beneficiaries of the trust, and that he further intended that the charitable institutions, agencies, means and activities through which the purposes of the trust were to be effectuated by established, administered, pursued and carried out in Bowie County, Texas.

VIII

The charter of The William Buchanan Foundation was executed on February 1, 1930, filed on February 6, 1930, and a copy of said charter is attached hereto as "Exhibit A" and made a part hereof as fully as if copied verbatim herein.

IX

It is wrongfully contended by the Defendants that the primary beneficiaries of the charitable trust created by William Buchanan are not limited to the residents of Bowie County, Texas and of the adjoining counties but may be drawn from any portion of the United States or of the world to the exclusion of the residents of Bowie and adjoining counties.

X

Defendants also wrongfully contend that the charitable institutions, agencies, means and activities authorized by the trust instrument need not be established, administered, pursued and carried out in Bowie County, but that such institutions, agencies, means and activities may be established, administered, pursued and carried out in any portion of the United States or of the world.

XI

In accordance with Defendants' interpretation of the trust instrument, The William Buchanan Foundation has heretofore made expenditures from the trust fund for the benefit of the following institutions and agencies outside Bowie County, Texas:

(1) Five Thousand ($5,000.00) Dollars to the Texas Eleemosynary Commission for the purpose of making a survey of the care of the mentally sick in Texas.

(2) Thirty-one Thousand ($31,000.00) Dollars to the Southwestern Medical School of The University of Texas at Dallas for the development and maintenance of a research laboratory.

(3) One Thousand Eight Hundred Thirty-six and 84/100 ($1,836.84 Dollars to The Council of Social Agencies for a survey of Dallas County's health facilities for children.

(4) One Hundred Twenty Thousand Seven Hundred Thirty-two and 85/100 ($120,732.85) Dollars to the Medical Branch of The University of Texas for the support of a Child Health Program.

(5) Five Hundred ($500.00) Dollars to Dr. Chauncey D. Leake, Dean of The University of Texas Medical Branch in Galveston, for expenses incident to securing a Director for said Child Health Program.

XII

Defendant, The William Buchanan Foundation, has presently outstanding commitments to The University of Arkansas in the sum of Five Hundred Thousand ($500,000.00) Dollars and to The University of Texas in the sum of approximately Thirty-eight Thousand ($38,000.00) Dollars, copies of which commitments are attached hereto as "Exhibit B" and are made a part hereof as fully, for all purposes, as if incorporated herein verbatim; which commitments if fulfilled will violate the announced intent and purpose of the settlor of the trust to the great detriment of the primary beneficiaries of the trust, the residents of Bowie and adjoining counties.

XIII

Since the Trust was created, the only sums expended thereunder in Bowie or adjoining counties, have totaled Twenty-five Thousand Seven Hundred Twenty-eight and 25/100 ($25,728.25) Dollars.

XIV

Plaintiff avers that it is the purpose and intention of Defendants, The William Buchanan Foundation, and the trustees thereof, unless restrained by this Honorable Court, to fulfill these commitments and, further, to continue the expenditure and dissipation of the trust funds outside the limits of Bowie County, in contravention of the settlor's charitable purpose and intent announced in the trust instrument. Plaintiff fears and therefore avers that said Defendants will take all of the aforesaid steps at some indefinite time in the future so that Plaintiff will be unable to discharge his duty of seeing that this public charitable trust is faithfully administered according to the intent of the settlor and its purpose fully effectuated.

XV

Under the laws of this State this Court has jurisdiction to construe a charitable trust, to determine the beneficiaries, and to declare the duties of the trustees thereof.

Wherefore, Plaintiff prays that this Court take jurisdiction of the parties and the subject matter of this cause; that the Court, by its decree herein, find and declare that the primary beneficiaries of the trust created by William Buchanan are the residents of Bowie County, Texas and of counties adjoining Bowie County, Texas, and that the charitable institutions, agencies, means and activities authorized by the trust instrument must be established, administered, pursued and carried out in Bowie County, Texas; that Defendant, The William Buchanan Foundation, its trustees, agents, servants and employees be enjoined from fulfilling the commitments heretofore made to The University of Arkansas and to The University of Texas; that the Defendant The William Buchanan Foundation and the trustees thereof be directed to comply in the future with the settlor's directions and limitations on the charitable activities provided for in the trust instrument; for general relief, and for costs of suit.

JOHN BEN SHEPPERD,
Attorney General of Texas.
WILLIAM H. HOLLOWAY,
MARIETTA MCGREGOR CREEL,
Assistant Attorneys General
Attorneys for Plaintiff
Capitol Station, Austin, Texas

"Exhibit A" herein is the same as complainant's Exhibit A and Exhibit B.

"Exhibit B" herein included the complainant's Exhibits C, D, E and F.